



National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Notice

PN 97-93
March 3, 2004

OPTION EXERCISE CONSIDERATIONS

BACKGROUND: As a part of the broader President's Management Agenda Competitive Sourcing element, the NASA Administrator directed Agency Procurement officials to review business practices to determine ways in which NASA can conduct business more efficiently, and maximize opportunities for competition. A team of NASA procurement officials reviewed Federal and NASA acquisition regulations to determine the need to apply greater scrutiny in certain areas of the procurement process. The team determined that in general the regulations provide a sufficient level of guidance to protect the Government's interest as well as the necessary flexibility to make sound business decisions for the Agency. However, increased emphasis on public notices, acquisition planning, and contractor performance in the option exercise decision-making process will allow NASA programs/projects to achieve and maintain optimum efficiency and effectiveness at each stage of the programmatic life cycle, and continually seek to incorporate advances in business and technology. This change implements process improvements and best practices in the exercise of contract options.

ACQUISITIONS AFFECTED BY CHANGES: (a) All solicitations and contracts that include options for continued performance; and (b) all sole-source acquisitions that require a synopsis of the proposed action.

ACTION REQUIRED BY CONTRACTING OFFICERS: Comply with the revised guidance for non-competitive synopses, acquisition plan content, and the option exercise analysis contained in new section 1817.207-70.

CLAUSE CHANGES: None

PARTS AFFECTED: Changes are made in Parts 1805, 1807, and 1817.

REPLACEMENT PAGES: You may use the enclosed pages to replace Part 1805, 7:3, 7:4, and Part 1817.

TYPE OF RULE AND PUBLICATION DATE: Not Applicable. This change does not have a significant effect beyond the internal operating procedures of the Agency or have a significant

cost or administrative impact on contractors or offerors and therefore does not require codification in the Code of Federal Regulations (CFR) or publication for public comment.

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**PART 1805
PUBLICIZING CONTRACT ACTIONS**

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**PART 1805
PUBLICIZING CONTRACT ACTIONS**

Subpart 1805.1--Dissemination of Information

1805.101 Methods of disseminating information.

(b)(4) For NASA policy regarding paid advertisements, see 1805.502.

Subpart 1805.2--Synopsis of Proposed Contracts

1805.207 Preparation and transmittal of synopses.

(a) Synopses shall be transmitted in accordance with 1804.570.

(c)(14) Notices for non-competitive solicitations, including non-competitive follow-on actions to contracts initially awarded utilizing full and open competition, shall provide sufficient information regarding the proposed requirement to allow potential sources to determine whether they possess the requisite capabilities and to make an informed business decision regarding whether to respond.

1805.207-70 Synopses of Architect-Engineer Services and Federal Information Processing Resources.

(a) Architect-Engineer Services.

(1) Each notice publicizing the acquisition of architect-engineer services shall be headed "*C. Architect-Engineer Services.*"

(2) In addition to meeting the requirements of FAR 5.207(c), the project description shall--

(i) State the relative importance the Government attaches to the significant evaluation criteria and the date by which responses to the notice must be received, including submission of Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, if required;

(ii) Describe any specialized qualifications, security classifications, and limitations on eligibility for consideration;

(iii) Describe qualifications or performance data required from architect-engineer firms; and

(iv) If the acquisition is to be set aside for small business, state this fact, indicating the specific size standard to be used and requiring that eligible responding firms submit a small business representation.

(3) Contracting officers shall add at the end of the synopsis:

See Note 24. Provisions of Note 24 apply to this notice except that (a) in the sentence beginning "Selection of firms for negotiations," the fourth additional consideration listed is changed to read: "(4) past experience, if any, of the firm with respect to performance on contracts with NASA, other Government agencies, and private industry;" and (b) in the last sentence, "National Aeronautics and Space Administration" is substituted for "Department of Defense."

(b) Federal Information Processing (FIP) Resources.

(1) When total requirement quantities are expected to satisfy the needs of only a single field installation, each notice publicizing the acquisition of FIP resources under an indefinite delivery/indefinite quantity contract or under a contract that includes options for additional quantities of such resources shall include the following:

The _____ (identify contracting activity) is the primary delivery point for the items described in this synopsis. However, NASA may order delivery to the following alternate locations: _____ (List other NASA installations and their locations).

(2) When the contemplated contract will authorize orders from locations other than the awarding installation, the notice shall fully describe the ordering scope.

Subpart 1805.3--Synopses of Contract Awards

1805.303 Announcement of contract awards.

(a)(i) In lieu of the \$3 million threshold cited in FAR 5.303(a), NASA Headquarters public announcement is required for award of contract actions that have a total anticipated value, excluding unexercised options, of \$25 million or greater. This threshold applies to new awards, contract modifications, and option exercises, but not to incremental funding or cost overrun modifications.

(A) For undefinitized contract actions, the not-to-exceed (NTE) or ceiling price value is the face value.

(B) For indefinite delivery, time and material, labor hour, and similar contracts, the estimated amount of the basic contract is the face value. Individual orders up to the face value shall not be announced regardless of value. However, after the face value is reached, any subsequent modifications or orders of \$25 million or greater must be announced.

(ii) NASA Headquarters public announcement is also required for award of a contract action with a value of less than \$25 million if the contracting officer believes it to have Agency public information implications.

(iii) Contractual instruments requiring Headquarters public announcement shall not be distributed nor shall any source outside NASA be notified of their status until the public announcement procedures in 1805.303-70 have been completed.

1805.303-70 NASA Headquarters public announcement.

(a) For those contract actions requiring Headquarters public announcement in accordance with 1805.303, the contracting officer shall furnish a draft news release including the following information, through the installation Public Affairs Office, via facsimile transmission to the Headquarters Office of Public Affairs, News and Imaging Branch (Code PM):

- (1) A brief description of the work, including identification of the program and project;
- (2) Identification of the contract action as either a new contract or additional work or services under an existing contract;
- (3) Contract type. For undefinitized contract actions, identify the planned contract type of the definitized instrument;
- (4) The dollar amount authorized for the instant action and the estimated total cost of the contract if this is different. For undefinitized contract actions, indicate the NTE or ceiling price amount;
- (5) Name and address (including zip code) of the contractor;
- (6) Principal work performance locations;
- (7) Names and addresses of any unsuccessful offerors.

(b) The information in paragraph (a) of this section shall be provided to Code PM before transmitting a letter contract to a contractor for signature. For actions other than letter contracts, the information should be transmitted to Code PM after contractor signature, if applicable, no later than 48 hours before the planned award.

(c) For contract actions requiring Headquarters approval in accordance with 1804.72, the draft news release required by paragraph (a) of this section shall be provided to the Headquarters Office of Procurement (Code HS) with the request for approval. Code HS will forward the information to Code PM after approval.

(d) Code PM will advise the installation Public Affairs Office of the date public announcement of the contract action will be made. Installations may proceed with award and local release of the information no earlier than 4:00 P.M. ET of the date Code PM makes public announcement. If earlier award is considered appropriate, installations must request authorization from the Assistant Administrator for Procurement (Code HS).

1805.303-71 Administrator's notice of significant contract actions (ANOSCA's).

(a) In addition to the public announcement requirements described in 1805.303-70, contracting officers shall notify the Administrator of the following significant actions at least five (5) workdays prior to planned public announcement of the actions:

(1) Planned contract award for competitive acquisitions of \$25 million or more, including all priced options.

(2) Planned contract award of non-competitive awards and new work modifications of \$100 million or more, including all priced options.

(3) Planned award of other actions, to include cooperative agreements resulting from a Cooperative Agreement Notice (CAN), at any dollar value thought to be of significant interest to Headquarters.

(b) To provide notification to the Administrator, the contracting officer shall send the information listed in paragraphs (b)(1)-(10) of this section to the Headquarters Office of Procurement (Code HS) via facsimile transmission (202-358-4065). Immediately prior to transmission, the contracting officer shall notify Code HS by telephone of the impending transmission. In accordance with FAR 3.104-5(c), the contracting officer shall mark all pages that include source selection information with the legend "SOURCE SELECTION INFORMATION - SEE FAR 3.104." The following information shall be sent:

(1) Title and a brief nontechnical description of the work, including identification of the program or project;

(2) Identification of the contract action as either a new contract or additional supplies or services under an existing contract;

(3) Contract type (including whether a cost contract is completion or level-of-effort). For undefinitized contract actions, identify the planned contract type of the definitized instrument;

(4) The total contract value for the instant action including all priced options. Also include the Government's most probable cost. For undefinitized contract actions, indicate the NTE or ceiling price amount;

(5) The name, address, and business size status of the prime contractor and each major (over \$1M) subcontractor;

(6) Small business and small disadvantaged business subcontracting goals both in dollars and percentage of the value of the action including all options;

(7) Principal work performance locations;

(8) Brief description of any unusual circumstances;

(9) The names and telephone numbers of the contracting officer and project manager; and

(10) For competitive selections only, provide on a separate attachment the names and addresses of all unsuccessful offerors and a brief explanation of the general basis for the selection.

(c) The field installation shall not proceed with any awards or announcements until Code HS has advised that the Administrator has been notified of the proposed action and the supporting information. Once this advice is received from Code HS, the field installation shall proceed with the public announcement procedures described in 1805.303-70.

Subpart 1805.4--Release of Information

1805.402 General public.

(1) Unless the head of the contracting activity determines that disclosure would be prejudicial to the interests of NASA, the following information on NASA acquisitions may be released:

(i) The names of firms invited to submit offers, and

(ii) The names of firms that attended any pre-bid or pre-proposal conferences.

(2) Other requests for information under the Freedom of Information Act shall be processed in accordance with FAR 24.2 and 1824.2.

1805.403 Requests from Members of Congress.

(a) All proposed replies to congressional inquiries shall be prepared and forwarded, with full documentation, to the Headquarters Office of Legislative Affairs (Code L) for approval and release.

Subpart 1805.5--Paid Advertisements

1805.502 Authority.

Use of paid advertisements for procurement purposes (except CBD announcements) is not authorized in NASA.

(a) The acquisition planning team shall obtain input from the center offices responsible for matters of safety and mission assurance, occupational health, environmental protection, information technology, export control, and security. Their presence on the team shall help to ensure that all NASA acquisitions are structured in accordance with NASA safety, occupational health, environmental, export control, and security policy. As part of this process, the team shall recommend any appropriate solicitation or contract requirements for implementation of safety, occupational health, environmental, information technology, export control, and security concerns. (See NPG 8715.3, NASA Safety Manual; NPG 7120.5, NASA Program and Project Management Processes and Requirements; NPG 2810.1, Security of Information Technology, and NPG 1620.1, Security Procedures and Guidelines, all available at www.nodis.hq.nasa.gov).

1807.105 Contents of written acquisition plans.

Acquisition plans shall address each applicable topic listed in FAR 7.105, as supplemented by this section. Plans shall be structured by subject heading using each italicized topic heading in the same sequence as presented in the FAR. Subheadings should be used when appropriate (e.g., the separate items under contracting considerations at 7.105(b)(4)). Topics not applicable to a given acquisition (e.g., design-to-cost and should-cost are not compatible with service acquisitions), should be marked N/A. The requirements in FAR 7.105 regarding performance-based contracting methods shall not be limited to acquisition plans for service contracts.

(a)(1) Describe in nontechnical terms the supplies or services to be acquired. Include quantities.

(a)(2) NPG 7120.5 shall be an integral part of acquisition planning for programs and projects subject to its requirements. If the NPG does not apply, the acquisition plan shall clearly state that fact. If the NPG does apply, specify whether all required NPG 7120.5 documentation is current and approved (see 1804.7301(b)(2)(i)). If not, describe the approach for obtaining approval or the authority to proceed without approval before release of draft or final solicitations. For programs and projects under the NPG, all draft or final solicitations subject to, or directly or substantially in support of, those programs or projects shall clearly identify the program or project of which they are part.

(a)(3) Identify the estimated cost and describe the estimating methodology.

_(a)(5) Specify the delivery or performance period requirements separately by the basic contract, each option, and the total. Provide supporting rationale, which describes the relationship between the technical requirements and the proposed period of performance, including the basis for the decision regarding duration and the appropriateness of the inclusion of options.

(a)(7) Discuss project/program risks (see NPG 7120.5, NASA Program and Project Management Processes and Requirements). In addition to technical, schedule, and cost risks, the discussion shall include such considerations as: safety and security (including personnel, information technology, and facilities/property); the need to involve foreign sources (contractor and/or governmental), and risks of unauthorized technology transfer (see NPD 2110.1D and Export Control Program (<http://www.hq.nasa.gov/office/codei/nasaecp/ecpolicy.html>)); and resource risk, including the necessary level and expertise of NASA personnel resources available to manage the project/program. For each area of risk identified, the discussion shall include a quantification of the relative magnitude (e.g., high, medium, low) together with the specific actions taken to structure the acquisition approach to manage the risks throughout the acquisition process. For example, this discussion would identify those areas that have safety risk, discuss

how safety is addressed in contract requirements and evaluated in the source selection, and how it will be managed and incentivized during contract performance. Decisions to accept, mitigate, track, and/or research risk factors shall be identified and documented as part of acquisition planning.

(a)(8) Streamlining applies to all NASA acquisitions. Describe all planned streamlining procedures.

(b)(3) Address how cost realism will be evaluated.

(b)(4)(A) If an incentive contract is planned, describe the planned incentive(s) and the anticipated effects.

(B) Describe subcontracting issues, including all applicable subcontracting goals. (See FAR Part 19 and Part 1819).

(b)(5)(A) Identify the estimated cost separately by the basic contract, each option and total amount.

(B) Identify the funding by fiscal year and unique project number (UPN).

(C) Discuss planned approaches to eliminate funding shortfalls (vs. the estimated cost).

(b)(6) Identify the type of work statement/specification planned. Specifically address the applicability of performance-based requirement descriptions and the availability of commercial sources for the supplies/services.

(b)(10) Address contract management issues, including --

(A) Planned delegations of administrative functions; and

(B) When contract changes are anticipated, the plan to manage such changes and the specific measures that will be taken to minimize the issuance of undefinitized contract actions.

(b) (20) If the period between release of solicitation to contract award is more than 120 calendar days (180 days for formal SEB competitions), explain why that goal cannot be met.

1807.107 Additional requirements for acquisitions involving bundling.

(c) Requests for approval of proposed bundlings that do not meet the thresholds in FAR 7.107(b) must be sent to the Headquarters Office of Procurement (Code HS).

(e) The substantial bundling documentation requirements applies to each proposed NASA bundling expected to exceed \$5 million or more. The contracting officer must forward the documentation along with the measurable benefits analysis required by FAR 7.107(b) to the Headquarters Office of Procurement (Code HS) in sufficient time to allow a minimum of 10 days for review.

1807.107-70 Orders against Federal Supply Schedule contracts, Governmentwide acquisition contracts (GWACs), or other existing indefinite-delivery contracts.

The FAR and NFS requirements for justification, review, and approval of bundling of contract requirements also apply to an order from a Federal Supply Schedule contract, Governmentwide acquisition contract, or other indefinite-delivery contract if the requirements consolidated under the order meet the definition of "bundling" at FAR 2.101.

1807.170 Acquisition Strategy Meeting (ASM).

(a) The ASM is an acquisition plan conducted through a meeting attended by all interested NASA offices. At the meeting, the acquisition plan topics and structure specified in 1807.105 are presented in briefing format, and formal written minutes prepared to summarize the decisions, actions, and conclusions of the ASM members. The approved minutes, along with the briefing

PART 1817
SPECIAL CONTRACTING METHODS

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PART 1817 SPECIAL CONTRACTING METHODS

Subpart 1817.1--Multiyear Contracting

1817.105 Policy.

1817.105-1 Uses.

(b) The Assistant Administrator for Procurement (Code HS) is the approval authority for the use of the multiyear contracting technique. Requests for approval shall be signed by the procurement officer and shall include a description of the acquisition, identification of anticipated contract costs and funding, and a determination, with supporting rationale, that each of the criteria in FAR 17.105-1(b) is met by the proposed use of multiyear contracting.

Subpart 1817.2--Options

1817.200 Scope of subpart.

FAR Subpart 17.2 applies to all NASA contracts.

1817.203 Solicitations.

(g)(2) The procurement officer is authorized to approve option quantities greater than 50 percent.

1817.204 Contracts.

(e)(i) The 5-year limitation (basic plus option periods) applies to all NASA contracts regardless of type, except when the time needed to complete system development or hardware production is greater than five years.

(ii) Requests for deviations from the 5-year limitation policy shall be sent to the Assistant Administrator for Procurement (Code HS) and shall include justification for exceeding five years and evidence that the extended years can be reasonably priced.

1817.206 Evaluation.

(b)(i) The procurement officer is the approval authority for determinations by the contracting officer not to evaluate offers for any option quantities or periods.

(ii) Unless a determination has been approved under 1817.206(b)(i), the selection statement for each acquisition involving an option shall address the source selection authority's consideration of the option as part of the initial competition.

1817.207 Exercise of options.

~~—~~(c)(2) In addition to determining the option fulfills an existing need, the contracting officer shall determine that there is no change in the scope of the option requirements.

(f) Options under cost type contracts shall contain an estimated cost for the option period(s).

(f)(2) Use of the provision (or formula) for determining the price of a fixed price option requires advance approval by the Assistant Administrator for Procurement (Code HS).

(f)(3)(ii) Use of a formula to determine the fee of an option in a cost-type contract requires advance approval of the Assistant Administrator for Procurement (Code HS). The formula shall preclude the contractor from increasing costs for the purpose of earning additional fee.

1817.207-70 Analysis to support exercise of options.

(a) The contracting officer's determination that exercise of the option is the most advantageous method of fulfilling the requirement shall be based on input and information from the requiring organization. The contracting officer and the requiring organization shall ensure that analysis sufficient to support the determination that option exercise is the most advantageous method is completed in advance of providing the notice to the contractor required by FAR 17.207(a). Sufficient time shall remain in the performance period to allow the acquisition team to pursue appropriate alternative approaches with minimal impact to the program or project in terms of technical, cost, or schedule risk should the analysis conclude that the best programmatic path is not exercising the option.

(b) The analysis required to support the option exercise determination must include consideration of other factors in addition to price. In addition to the other factors contained in FAR 17.207(e), the determination to exercise the option should include, but is not limited to, consideration of --

(1) The contractor's performance in satisfying contract requirements, for example, receiving positive performance ratings (see subpart 1842.15) and the contractor's level of success in implementing and maintaining small business programs (including mentoring arrangements), which were evaluated as part of the source selection process and incorporated into the awarded contract; and

(2) The results of market research activities to identify any technical, engineering or scientific advances that offer programmatic benefits or performance improvements beyond those that are contractually available under the option to be exercised.

1817.208 Solicitation provisions and contract clauses.

(c)(3) The contracting officer shall insert a provision substantially the same as FAR 52.217-5 in cost reimbursement contracts when the other conditions of FAR 17.208(c) are met.

Subpart 1817.4--Leader Company Contracting

1817.401 General.

It is NASA policy not to use the leader company contracting technique.

Subpart 1817.5--Interagency Acquisitions Under the Economy Act

1817.500 Scope of subpart.

(b) See 1817.72.

Subpart 1817.70 --Acquisitions with Military Departments

1817.7000 Scope of subpart.

This subpart contains policies and procedures, developed jointly by NASA and DOD, for acquisition of supplies or services by NASA from or through the Military Departments.

1817.7001 Authorization and policy.

(a) NASA is authorized by the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.) to use the acquisition services, personnel, equipment, and facilities of the Military Departments, with their consent and with or without reimbursement, and, on a similar basis, to cooperate with the Military Departments in the use of acquisition services, equipment, and facilities.

(b) The Military Departments have agreed to cooperate fully with NASA in making their acquisition services, equipment, personnel, and facilities available on the basis of mutual agreement.

(c) The Military Departments have agreed not to claim reimbursement for administrative costs incident to acquisitions for NASA, except as may be otherwise agreed before the services are performed.

(d) When procuring supplies or services for NASA or performing field service functions in support of NASA contracts, the Military Departments have agreed to use their own methods, except when otherwise required by the terms of the agreement involved.

(e) The Military Departments normally will use their own funds when procuring supplies or services or performing services for NASA, and will not cite NASA funds on any Defense obligation or payment document.

1817.7002 NASA-Defense Purchase Request and acceptance.

(a) The NASA-Defense Purchase Request (NASA Form 523) shall be used by NASA contracting offices for requesting acquisition of supplies or services from all activities of the Military Departments. Individual NASA-Defense Purchase Requests shall be prepared in accordance with the instructions on the reverse of NASA Form 523 and shall be numbered in accordance with Subpart 1804.71. The form shall not be used for requesting --

(1) Block transfers of excess property between NASA and the Military Departments;

(2) Performance by the Military Departments of field service functions related to NASA contracts; or

(3) Items that the Military Departments normally purchase and stock for military use or in-house services, except when a DOD activity is willing to accept the form for these purposes. Supplies and services of this nature may be requisitioned using appropriate DOD forms when they are provided by and are acceptable to or preferred by the Military Department supplying activity or as otherwise mutually agreed upon by the parties.

(b) Include a provision in accordance with 1817.7203.

(c) To obtain materials from the Air Force Missile Procurement Fund, the contracting officer shall follow the procedures of 1808.002-72.

1817.7002-1 Acceptance by Military Department.

(a) Except as provided in paragraph (c) of this section, the Military Department concerned will, within 30 days after receipt of a NASA-Defense Purchase Request, forward to the initiator of the request an Acceptance of MIPR, DD Form 448-2. Each DD Form 448-2 will show the action being taken to fill the requirement and the name and complete address of the DOD contracting activity.

(b) To the extent feasible, all documents (including acceptances, contracts, correspondence, shipping documents, work or project orders, and Standard Form 1080 (Voucher for Transfer between Appropriations and/or Funds) billings) will reference the NASA-Defense Purchase Request number and the item number.

(c) Acceptance by the Military Department is not required for NASA-Defense Purchase Requests covering deliveries of common-use standard-stock items that the supplying agency has on hand or on order for prompt delivery at published prices.

1817.7002-2 Changes in estimated total prices.

When a Military Department determines that the estimated total price (Block 7, NASA Form 523) of the items to be acquired for NASA is not sufficient to cover the required reimbursement or is in excess of the amount required, a request for an amendment will be forwarded to the NASA originating office. The request will indicate a specific dollar amount, rather than a percentage, and will include justification for any upward adjustment requested. Upon approval of the request, the cognizant NASA contracting office shall forward to the DOD contracting activity an amendment to the NASA Defense Purchase Request.

1817.7002-3 Payments.

Except when agreements provide that reimbursement is not required, payments to the Military Departments shall be made by NASA office designated in block 9 of the NASA-Defense Purchase Request upon receipt of Standard Form 1080. Billings will be supported in the same manner as billings between Military Departments.

1817.7002-4 Contract clause.

The contracting officer shall insert the clause at 1852.217-70, Property Administration and Reporting, in any NASA-Defense Purchase Request when property will be involved.

Subpart 1817.71--Exchange or Sale of Personal Property

1817.7101 Policy.

(a) Section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c)), authorizes the exchange or sale of Government personal property and the application of the exchange allowance or proceeds from sale to the acquisition of similar property for replacement purposes. The transaction must be evidenced in writing.

(b) NASA installations and contractors are authorized to conduct exchange/sale transactions as long as the requirements and restrictions of NPG 4300.1 and the Federal Property Management Regulations, Subchapter H, part 101-46, are followed. In conducting such exchanges/sales, NASA contractors must obtain the contracting officer's prior written approval and must report the transactions to the cognizant NASA installation Property Disposal Officer (PDO).

Subpart 1817.72--Interagency Transactions

1817.7201 Policy.

(a) The Space Act (42 U.S.C. 2473) applies to NASA interagency acquisitions except those for the NASA Office of Inspector General acquired under the authority of the Inspector General Act of 1978 (5 U.S.C. Appendix III). NASA has elected to conform its implementation of the Space Act and the Inspector General Act to the requirements of the Economy Act (see FAR 17.5).

(b) Individual orders or successive non-competitive interagency orders for the same requirement with the same servicing agency shall not exceed five years.

(c) Requests for deviation from the five year limitation in paragraph (b) of this section shall require the approval of the Center Director if the estimated value of the order is \$5 million or less, or the Assistant Administrator for Procurement (Code HS) if the estimated value of the order exceeds \$5 million. Requests for deviation shall address:

- (1) Why more than five years is required;
- (2) Why the work must be performed by the same servicing agency; and
- (3) How long beyond the current order the requirement is expected to continue.

1817.7202 Determinations and findings requirements.

(a) Interagency acquisitions shall be supported by a Determination and Finding (D&F) equivalent to that required for Economy Act transactions (see FAR 17.503). This requirement applies to all purchases of goods or services under contracts entered into or administered by agencies other than NASA including the Military Departments. The Space Act shall be cited as authority for all NASA interagency acquisitions except that the Inspector General Act shall be cited as the authority for interagency acquisitions for the NASA Office of Inspector General.

(b) To satisfy the D&F requirement identified in FAR 17.503(a)(2), current market prices, recent acquisition prices, or prices obtained by informational submissions as provided in FAR 15.201 may be used to ascertain whether the acquisition can be accomplished more economically from commercial sources.

(c) In addition to the requirements in FAR 17.503, the D&F must identify the period of performance and whether the acquisition is a non-competitive follow-on for the same services from the same servicing agency. (See 1817.7201(b).)

(d) The determination described in paragraph (a) of this section is not required for contracts awarded under the Space Act to Government agencies pursuant to a Broad Agency Announcement when a review of the acquisition records would make it obvious that the award is not being used as a method of circumventing regulatory or statutory requirements, particularly FAR Part 6, Competition Requirements (e.g., when a significant number and value of awards made under the BAA are made to entities other than Government agencies).

(e) All D&F's for a servicing agency not covered by the FAR shall be approved by the Assistant Administrator for Procurement.

1817.7203 Ordering procedures.

To satisfy the ordering procedures in FAR 17.504(b)(4), all payment provisions shall require the servicing agency or department to submit a final voucher, invoice, or other appropriate

payment document within six months after the completion date of the order. A different period may be specified by mutual agreement if six months is not sufficient.

Subpart 1817.73--Phased Acquisition

1817.7300 Definitions.

(a) **Down-selection.** In a phased acquisition, the process of selecting contractors for later phases from among the preceding phase contractors.

(b) **Phased Acquisition.** An incremental acquisition implementation comprised of several distinct phases where the realization of program/project objectives requires a planned, sequential acquisition of each phase. The phases may be acquired separately, in combination, or through a down-selection strategy.

(c) **Progressive Competition.** A type of down-selection strategy for a phased acquisition. In this method, a single solicitation is issued for all phases of the program. The initial phase contracts are awarded, and the contractors for subsequent phases are expected to be chosen through a down-selection from among the preceding phase contractors. In each phase, progressively fewer contracts are awarded until a single contractor is chosen for the final phase. Normally, all down-selections are accomplished without issuance of a new, formal solicitation.

1817.7301 Down-selections in phased acquisitions.

1817.7301-1 Pre-solicitation planning.

(a) The rationale for the use of the down-selection technique shall be thoroughly justified in the acquisition planning requirement. Because the initial phase solicitation will also lead to subsequent phase award(s), the decision to use a down-selection strategy must be made prior to release of the initial solicitation. Accordingly, all phases must be addressed in the initial acquisition strategy planning and documented in the acquisition plan or ASM minutes.

(b) If there is no direct link between successful performance in the preceding phase and successful performance in a subsequent phase, down-selection is inappropriate. In this case, the phases should be contracted for separately without a down-selection.

(c) With one exception, both the initial and subsequent phase(s) of an acquisition down-selection process are considered to be full and open competition if the procedures in 1817.7301-4 and 1817.7301-5 (if using the progressive competition technique) are followed. If only one contractor successfully completed a given phase and no other offers are solicited for the subsequent phase, award of the subsequent phase may be made only if justified by one of the exceptions in FAR 6.302 or one of the exclusions in FAR 6.2, and only after compliance with the synopsis requirements of FAR 5.202 and 5.205 and 1804.570-2.

1817.7301-2 Evaluation factors.

A separate set of evaluation factors must be developed for each phase in a down-selection competition. Since these competitive down-selection strategies anticipate that a preceding phase contractor will be the subsequent phase contractor, the evaluation factors for initial phase award must specifically include evaluation of the offerors' abilities to perform all phases.

1817.7301-3 Down-selection milestones.

(a) When sufficient programmatic and technical information is available to all potential offerors, proposal evaluation and source selection activities need not be delayed until completion of a given phase. These activities should commence as early as practicable. The initial phase contracts should be structured to allow for down-selection at a discrete performance milestone (e.g., a significant design review or contract completion) of a design maturity sufficient to allow for an informed selection decision. This will avoid time gaps between phases and eliminate unnecessary duplication of effort.

(b) The appropriate contract structure must reflect program technical objectives as well as schedule considerations. For example, if a two-phased acquisition strategy calls for formal completion of initial phase effort at Preliminary Design Review (PDR), but it is not financially practical or technically necessary for subsequent phase award and performance to carry all initial phase contractors through PDR, the initial phase contracts should be structured with a basic period of performance through a significant, discrete milestone before PDR with a priced option for effort from that milestone to PDR. The down-selection would occur at the earlier milestone, the PDR option exercised only for the down-selection winner, and the subsequent phase performance begun at the completion of the PDR option.

1817.7301-4 Synopsis.

(a) Each phase of a phased acquisition not performed in-house must be synopsisized in accordance with FAR 5.201 and must include all the information required by FAR 5.207. Time gaps between phases should be minimized by early synopsis of subsequent phase competition. The synopsis for the initial competitive phase should also state the following:

(1) The Government plans to conduct a phased acquisition involving a competitive down-selection process. (Include a description of the process and the phases involved).

(2) Competitions for identified subsequent phases will build on the results of previous phases.

(3) The award criteria for subsequent phases will include demonstrated completion of specified previous phase requirements.

(4) The Government expects that only the initial phase contractors will be capable of successfully competing for the subsequent phase(s). Proposals for the subsequent phase(s) will be requested from these contractors.

(5) The Government intends to issue (or not issue) a new, formal solicitation(s) for subsequent phase(s). If new solicitations are not planned, the acquisition must be identified as a "progressive competition" (see 1817.7301-5), and the mechanism for providing pertinent subsequent phase proposal information (e.g., statements of work, specifications, proposal preparation instructions, and evaluation factors for award) must be described.

(6) Each subsequent phase of the acquisition will be synopsisized in accordance with FAR 5.201 and 5.203.

(7) Notwithstanding the expectation that only the initial phase contractors will be capable of successfully competing for the subsequent phase(s), proposals from all responsible sources submitted by the specified due date will be considered. In order to contend for subsequent phase awards, however, such prospective offerors must demonstrate a design maturity equivalent to that of the prior phase contractors. Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(b) In addition to the information in paragraph (a) of this section, the synopsis for the subsequent phase(s) must identify the current phase contractors.

1817.7301-5 Progressive competition.

(a) To streamline the acquisition process, the preferred approach for NASA phased acquisitions is the "progressive competition" down-selection technique in which new, formal solicitations are not issued for phases subsequent to the initial phase. Subsequent phase proposals are requested by

less formal means, normally by a letter accompanied by the appropriate proposal preparation and evaluation information.

(b) When using the progressive competition technique, if a prospective offeror other than one of the preceding phase contractors responds to the synopsis for a subsequent phase and indicates an intention to submit a proposal, the contracting officer shall provide to that offeror all the material furnished to the preceding phase contractors necessary to submit a proposal. This information includes the preceding phase solicitation, contracts, and system performance and design requirements, as well as all proposal preparation instructions and evaluation factors. In addition, the prospective offeror must be advised of all requirements necessary for demonstration of a design maturity equivalent to that of the preceding phase contractors.

(c) A key feature of the progressive competition technique is that a formal solicitation is normally not required. However, when the Government requirements or evaluation procedures change so significantly after release of the initial phase solicitation that a substantial portion of the information provided in the initial phase synopsis, solicitation, or contracts is no longer valid, a new solicitation shall be issued for the next phase.

(d) Subsequent phase proposals should be requested by a letter including the following:

(1) A specified due date for the proposals along with a statement that the late proposal information in paragraph (c)(3) of FAR 52.215-1, Instructions to Offerors -- Competitive Acquisition, applies to the due date.

(2) Complete instructions for proposal preparation, including page limitations, if any.

(3) Final evaluation factors.

(4) Any statement of work, specifications, or other contract requirements that have changed since the initial solicitation.

(5) All required clause changes applicable to new work effective since the preceding phase award.

(6) Any representations or certifications, if required.

(7) Any other required contract updates (e.g., small and small disadvantaged business goals).

(e) Certain factors may clearly dictate that the progressive competition technique should not be used. For example, if it is likely that NASA may introduce a design concept independent of those explored by the preceding phase contractors, it is also likely that a new, formal solicitation is necessary for the subsequent phase and all potential offerors should be solicited. In this circumstance, progressive competition is inappropriate.

1817.7302 Contract clauses.

(a) The contracting officer shall insert the clause at 1852.217-71, Phased Acquisition Using Down-Selection Procedures, in solicitations and contracts for phased acquisitions using down-selection procedures other than the progressive competition technique described in 1817.7301-5. The clause may be modified as appropriate if the acquisition has more than two phases. The clause shall be included in the solicitation for each phase and in all contracts except that for the final phase.

(b) The contracting officer shall insert the clause at 1852.217-72, Phased Acquisition Using Progressive Competition Down-Selection Procedures, in solicitations and contracts for phased acquisitions using the progressive competition technique described in 1817.7301-5. The clause may be modified as appropriate if the acquisition has more than two phases. The clause shall be included in the initial phase solicitation and all contracts except that for the final phase.